IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5310 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGUBHAI D PATEL - Petitioner(s)
Versus
COMMISSIONER OF TRIBAL DEVLOPMENT & 2 - Respondent(s)

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Appearance :
MR BS SUPEHIA for Petitioner(s) : 1,
Ms. Archana Raval, AGP for Respondent(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 3,
MR YATIN SONI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 21/09/2006

JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner, who was serving with the respondent No.3 in the Ashram Shala run by them, has prayed for a

declaration that he continues in service as Headmaster and his resignation of 17.4.1995 was forcibly obtained from the petitioner and the same is ineffective and illegal, and for a further declaration that the action of the management in obtaining the resignation by assaulting the petitioner on 17.4.1995 is against the rules and is violative of Article 14 and 16 of the Constitution of India. It is further prayed to direct the respondents No. 1 and 2 to take action against the respondent No.3 for not observing the directions and orders issued by them and for obtaining resignation forcibly from the petitioner.

2. It is the case on behalf of the petitioner that he was working as 'Headmaster' in the Ashram Shala run by respondent No.3 since 22.6.1991 and the respondent No.3 was not paying the salary to the petitioner and other teachers from August 1994 though full grant was received

from the Government and therefore the petitioner and other teachers wrote a letter to the management on 4.2.1995 and requested to pay to them their salary from August 1994 and also to pay pay-scales and bonus as approved by the Government. It is the case on behalf of the petitioner that on one hand the teachers were not paid the salary and on the other on 17.4.1995 the petitioner was assaulted and severely beaten by two persons and he had to be hospitalized for one week and that his resignation was forcibly taken. It is further submitted that a police complaint was made and the Criminal Case is going on. It is submitted by him that he has approached the Ashram Shala Adhikari and the Ashram Shala Adhikari directed the management to allow the petitioner to work as Headmaster in the Ashram Shala however the resignation was forcibly taken from him. As the petitioner was not taken on duty the petitioner has preferred the present Special Civil Application.

3. Relying upon Section 40(c) of the Bombay Primary Education Act, Shri Supehia, learned advocate appearing on behalf of the petitioner has submitted that resignation was required to be tendered before the appropriate authority and the same was required to be approved by the appropriate authority, and in the present case the resignation was taken forcibly and that too in breach of Section 40(c) of the Bombay Primary Education Act. He has relied upon one Resolution of Tribal Development Department dated 21st January 1996 by which the State Government has accepted the recommendations of Shri Bhagwatbhai Dave Committee and as such according to the petitioner the provisions of Bombay Primary Education Act would be applicable to the employees of Ashram Shala. For that purpose, he has relied upon Paragraph 2.8 thereof. He has further submitted that prior to 1994 the administration of the Ashram Shala was under the Director of Primary Education, however after 1994

the administration is under the Social Welfare and Tribal Welfare Department and as the provisions of Bombay Primary Education Act are applicable to the employees of Ashram Shala and as there is a breach of Section 40(c) of the Act, it is requested to allow the present Special Civil Application.

4. On the other hand, Shri Yatin Soni, learned advocate appearing on behalf of respondent No.3, while opposing the present Special Civil Application has raised preliminary objection with regard to maintainability of the present petition against the respondent No.3. It is further submitted that the respondent No.3 cannot be said to be a State within the meaning of Article 12 of the Constitution of India and therefore the present Special Civil Application under Article 226 of the Constitution of India against the respondent No.3 is not maintainable. Relying upon the affidavit-in-reply, it is

submitted that it is specifically denied that the resignation of the petitioner was taken forcibly. It is submitted that in view of the fact that departmental enquiry was required to be initiated against the petitioner and to see that no departmental enquiry is initiated the petitioner voluntarily tendered the resignation which came to be accepted. It is submitted that there was no such provision that the resignation is to be tendered before the appropriate authority and/or Ashram Shala Adhikari at the relevant time. It is further submitted that the provisions of Bombay Primary Education Act are not applicable to Ashram Shalas and/or their employees and therefore Section 40(c) of the Act would not be applicable. It is further submitted that even otherwise it is a disputed question of fact whether the resignation of the petitioner was taken forcibly or not and the same is not required to be decided in a petition under Article 226 of the Constitution of India.

5. The petition is also opposed by the respondents No. 1 and 2 and an affidavit-in-reply is also filed on behalf of respondents No. 1 and 2. It is submitted that the main dispute is between the petitioner and respondent No.3 and the petitioner has not complained to the department immediately about obtaining his resignation forcibly and hence it seems that there exists some dispute between the petitioner and the respondent management and he has submitted the resignation voluntarily.

6. Heard the learned advocates appearing for the parties. It is the case on behalf of the petitioner that the resignation dated 17th April 1995 is obtained forcibly. It is also required to be noted that the petitioner filed a criminal complaint for the same but Shri Supehia, learned advocate appearing for the petitioner has submitted he has no further instruction as to what has happened to the criminal

proceedings/complaint. Shri Supehia, has heavily relied upon Section 40(c) of the Act in support of his submission that the resignation was required to be tendered before and to be accepted by the appropriate authority and in the present case the resignation of the petitioner was not tendered before the appropriate authority, i.e., Ashram Shala Adhikari and therefore there is breach of Section 40(c) of the Bombay Primary Education Act and for the applicability of provisions of Bombay Primary Education Act, he has relied upon the resolution dated 21st January 1986 and the recommendations of the Bhagwatbhai Dave Committee. On going through the recommendations of the Bhagwatbhai Dave Committee which came to be accepted by the Government more particularly Paragraph No.2.8, it cannot be said that the provisions of the Bombay Primary Education Act are applicable to the employees of the Ashram Shala. What is provided by recommendation No. 2.8 is that the Ashram Shala

employees also be given all the benefits which are available to the employees of Education Committee. Under the circumstances, the contention on behalf of the petitioner, that the provisions of Bombay Primary Education Act would be applicable to the employees of Ashram Shala, cannot be accepted. When the provisions of Section 40(c) of the Act would not be applicable, there was no requirement of tendering the resignation before the appropriate authority. The Joint Director of Tribal Development Department has also vide communication dated 30th May 1996 informed all the Ashram Shala Adhikaris to see that the Circular dated 11.12.1995 is complied with by all the managements. It appears that the said Circular dated 11.12.1995 is in line with Section 40(c) of the Act. Thus, at the relevant time, i.e., on 17th April 1995, there was even no circular in existence. If the contention of the petitioner that provisions of Section 40(c) of the Bombay Primary Education Act are

applicable and the State Government has accepted the recommendations of the Bhagwatbhai Dave Committee with regard to applicability of Bombay Primary Education Act, in that case the authority would not have issued the said Circulars dated 11.12.1995 and 30th May 1996. Under the circumstances, there was no provision with regard to tendering of the resignation before the appropriate authority at the relevant time. Even otherwise, the question whether the resignation was taken forcibly or not is a disputed question of fact which is not required to be decided in a petition under Article 226 of the Constitution of India. It is also required to be noted as stated above that the petitioner did file a criminal complaint with regard to his allegation that resignation was taken forcibly and he was beaten, however nothing is on record with regard to the criminal proceedings/trial, and that the outcome of such proceedings are not brought to the notice of this Court. In view of the above facts and

the disputed question of fact, the petitioner is not entitled to any relief in the present Special Civil Application under Article 226 of the Constitution of India. The maintainability of the petition under Article 226 of the Constitution of India qua respondent No.3 is kept open and the present Special Civil Application is decided and disposed of as if the petition against the respondent No.3 under Article 226 of the Constitution of India is maintainable.

7. For the reasons stated above, the petition fails. Rule is discharged. However, there shall be no order as to costs.

[M.R. Shah, J.]

RMR.